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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Plaintiff Image Ten, Inc.
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Date	10/09/2018
Attachments	Opposer Brief.pdf(2096907 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc. Opposer, v. Rusty Ralph Lemorande Applicant.	Opposition No.: 91233690 OPPOSER IMAGE TEN, INC.'S TO APPLICANT RUSTY LEMORANDE'S MOTION TO SUSPEND PROCEEDINGS AND COMPEL ACTION ON PART OF IMAGE 10 OPPOSER
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SUMMARY

On July 23, 2018, the TTAB ordered that Applicant's initial set of document requests are withdrawn and ordered Opposer to further respond to the second set of document requests. See Exhibit 1 hereto. Applicant's discovery cutoff was extended because the second set of document requests were served after the initial discovery cutoff. Opposer had objected to the second set of document requests as untimely. Because the TTAB extended the discovery cutoff for Applicant to allow for service of the Second Set of Document Requests, Opposer was ordered to withdraw its untimeliness objection but Opposer was permitted to raise any other objections to the requests. Because of this procedural posture, Opposer was not ordered to produce any documents at that time. Opposer's objections were to be resolved in a future motion.

Unfortunately, Opposer and its counsel reached an impasse concerning their representation. Pursuant to 37 C.F.R. § 11.116, counsel for Opposer commenced the process of withdrawal from representation. Counsel for Opposer is seeking to withdraw pursuant to Section 11.116(b)(5) in that "The client fails substantially to fulfill an obligation to the practitioner regarding the practitioner's services and has been given reasonable warning that the practitioner will withdraw unless the obligation is fulfilled." Here, Counsel informed Opposer that it would need to withdraw from this matter if Counsel did not receive payment for its outstanding services in August 2018.

Counsel for Opposer was giving Opposer a reasonable opportunity to find new counsel or fulfill its obligations to Counsel. In an effort to protect the interest of Opposer, Counsel served amended responses to Applicant's Second Set of Document Requests. Because of the nature of the relationship between Opposer and its Counsel, the responses to the Second Set of Document Requests contain only the updated objections withdrawing the untimeliness objections as set forth in the TTAB's July 23, 2018 ruling.

In September, Counsel for Opposer informed Applicant that Counsel would be seeking to withdraw. Counsel for Opposer further informed Applicant that it was not seeking to prejudice either Applicant or Opposer and that Counsel intended to ask the TTAB to permit Counsel to withdraw and reset discovery dates to allow both parties to work on this matter.

Unfortunately, Applicant did not want to provide Counsel and Opposer a reasonable opportunity to file the application for withdrawal. Applicant instead insisted on moving forward with a motion to compel.

COUNSEL FOR APPLICANT REQUESTS AN OPPORTUNITY TO FILE AND APPLICATION TO WITHDRAW

With the filing of Applicant's motion, Counsel for Opposer was no longer able to file their application to withdraw as counsel. Counsel for Opposer is prepared to file their application for withdrawal within 7 days after it is permitted by the TTAB to file the application for withdrawal. Counsel for Opposer has already given notice and a reasonable opportunity for Opposer to fulfill its obligations to Counsel and provided Opposer with an opportunity to either find new counsel or take over representation itself. Counsel for Opposer intends to ask for an Order permitting it to withdraw and Ordering Opposer to identify a new representative. Also, Counsel for Opposer will seek additional time to permit Applicant and Opposer to reasonably complete discovery which has been interrupted by Counsel's efforts to withdraw. Neither party will be prejudiced by withdrawal. Accordingly, Counsel request leave to file an application for withdrawal within 7 days of such leave to file the application.

SUBSTANTIVE OBJECTIONS

Applicant's motion conflates the responses filed by Opposer to Applicant's First Set of Document Requests with the Second Set of Document Requests. Pursuant to the July 23, 2018 Order, Applicant's First Set of Document Requests were withdrawn. Opposer thus responded to only the Second Set of Document Requests.

With regard to Opposer's objections to the Second Set of Document Requests, Counsel requests that ruling be deferred until Opposer has new counsel to present arguments on behalf of Opposer. However, in an effort to preserve the primary objections, Counsel provides the following summary of the basis for certain key objections:

1. Tax Return, Financial Statements, And Other Financial Information

Applicant's Request Nos. 6, 7, 19, 20, 21, 22, 24, 26, 27, 39, and 40, seek patently protected materials that are not relevant to this proceeding and Applicant has provided no justification for such materials. See Opposer's Responses to Second Set of Document Requests attached hereto as Exhibit 2. These materials include Opposer's tax returns as well as the tax returns of individuals shareholder John Russo, Gary Streiner, and Russ Streiner, who are not even parties to this proceeding. Moreover, the requests seek revenues from the Night of The Living Dead movies and remakes, as well as financial statements and other matters that have nothing to do with Opposer's trademark rights. Applicant also seeks financial documents from showing revenues from all sources without regard to the Night of the Living Dead trademark.

Counsel has previously informed Applicant that such materials are protected from discovery. It has long been recognized that tax returns are privileged from discovery *Aliotti v. Senora*, 217 F.R.D. 496, 497 (C.D. Cal. 2003); *Land Ocean Logistics, Inc. v. Aqua Gulf Corp.*, 181 F.R.D. 229, 238 (W.D.N.Y. 1998). There is no compelling need in this case to permit the discovery of tax returns. Applicant has asked for licenses and other evidence of Opposer's use of the Night of the Living Dead trademark over the last 50 years since the original Night of the Living Dead film was made. There is no doubt that Opposer has been using the trademark and tax returns do not establish the existence or lack of rights in a trademark. Moreover, financial statements and other financial documents of a corporation do not establish trademark rights and are not narrowly tailored to the specific issues before the TTAB. Here, Opposer is asserting its prior use of the Night of the Living Dead trademark over the last 50 years referring to the prior movies and merchandising which has been sold continuously since the 1968 release of the movie.

2. Information Regarding Opposer's Unrelated Business Activities

Applicant's Requests Nos. 14, 15, 16, 17, 18 seek documents relating to any motion pictures produced in the past 45 years. These are not limited to movies regarding Night of the Living Dead but include any movies of any titles. The document requests are based on

responses to Applicant's First Set of Requests for Admissions attached hereto as Exhibit 3. The denials for these requests for admissions have nothing to do with trademark rights in Night of the Living Dead. Accordingly, Opposer should not be ordered to produce documents having nothing to do with the issues in this matter.

CONCLUSION

Pursuant to the July 23, 2018 Order, the only relevant document requests are Applicant's Second Set of Requests for Production of Documents. Opposer objected to those requests many of which seek privileged information as discussed above.

Counsel for Opposer requests an opportunity to file an application to withdraw and allow the parties to work together to resolve the discovery disputes once Counsel is no longer involved. As noted above, the relationship between Counsel and Opposer is no longer viable and a new person needs to take over representation of Opposer's interests in this matter. Accordingly, Counsel requests an opportunity to file its application to withdraw and allow the appointment of a new person or counsel to represent Opposer.

Dated: October 9, 2018

Respectfully Submitted,

/mmeeks/

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CERTIFICATE OF SERVICE

Opposer, Image Ten, Inc., hereby certifies that a copy of this OPPOSER IMAGE TEN, INC.'S
TO APPLICANT RUSTY LEMORANDE'S MOTION TO SUSPEND PROCEEDINGS AND
COMPEL ACTION ON PART OF IMAGE 10 OPPOSER

has been served upon Applicant on this 9th day of October, 2018 by email at the following
address:

Lemorande@gmail.com

/s/ Michael L. Meeks

EXHIBIT 1

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

July 23, 2018

Opposition No. 91233690

Image Ten, Inc.

v.

Rusty Ralph Lemorande

**Katie W. McKnight,
Interlocutory Attorney:**

On March 16, 2018, Applicant filed a combined motion to compel supplemental responses to its document requests and motion to extend discovery by sixty days. Applicant included with its motion copies of Opposer's original and amended responses to Applicant's first set of document requests, as well as Applicant's revised document requests.¹ The motion is fully briefed.

Relevant Background

On February 8, 2018, the Board entered a scheduling order allowing Opposer thirty days to serve supplemental responses to Applicant's first set of document requests in accordance with the discovery guidelines set forth in the order. 12

¹ Although the revised set of document requests are entitled 'Rusty Lemorande's Second Set of Requests for Production of Documents,' Applicant refers to the requests as "a revised request for documents within the 75 request limit," and the revised requests include eighteen requests identical to Applicant's first set of document requests. 14 TTABVUE 5.

TTABVUE 5. In its order, the Board advised, *inter alia*, that “to the extent Opposer objects on the ground of excessive number as set forth in Trademark Rule 2.120(d) and (e), Opposer may serve a general objection, but it should not answer what it considers to be the first 75 requests and object to the rest as excessive.” 12 TTABVUE 4. The Board specifically noted that the order was a scheduling order, not a discovery order to compel responses to any outstanding discovery.

On March 7, 2018, Opposer served its amended responses to Applicant’s first set of document requests, which consisted entirely of an objection on the basis that the number of document requests exceeds the limit of 75 requests as set forth in Trademark Rule 2.120(e). 14 TTABVUE, Exhibit D. After Applicant inquired as to the status of document production in light of Applicant’s original document requests, and unsuccessfully sought Opposer’s consent to a sixty day extension of the discovery period, on March 13, 2018, Applicant served “revised” document requests (“Applicant’s revised document requests”). 14 TTABVUE 5. Applicant’s revised document requests consist of eighteen requests identical to those in its first set of document requests (Request Nos. 1-18), as well as thirty requests that are either beyond the scope of Applicant’s first set of document requests or seek follow-up discovery with respect to Opposer’s responses to Applicant’s first set of interrogatories (Request Nos. 19-48). 17 TTABVUE, Exhibit A.

For the purposes of this order, the Board otherwise presumes the parties’ familiarity with the history of the proceeding and the arguments and evidence submitted with respect to Applicant’s motion to compel.

Applicant's Motion to Compel

To the extent Applicant seeks to compel Opposer's responses to its first set of document requests, Applicant's motion is **denied** inasmuch as Applicant served a revised set of document requests in its stead. *Cf. Brawn of California, Inc. v. Bonnie Sportswear, Ltd.*, 15 USPQ2d 1572, 1574 (TTAB 1990). To the extent Applicant seeks to compel Opposer's responses to its revised document requests, Applicant's motion is **denied without prejudice** as premature, inasmuch as Opposer's responses to Applicant's revised document requests were not due until April 12, 2018, after Applicant had filed its motion to compel. *See* Trademark Rule 2.120(f).

However, the Board acknowledges that Applicant attempted to comply with Trademark Rule 2.120(e) and the guidelines set forth in the Board's February 8, 2018 order by serving its revised document requests. While Opposer was allowed thirty days in which to submit supplemental responses to Applicant's first set of document requests, it waited until its deadline to serve a simple objection as to excessive number and now argues that it will be prejudiced by Applicant's delay in bringing the present motion. In those cases in which a party which has propounded discovery requests realizes that the requests are excessive in number, "it is strongly recommended that the parties voluntarily agree to the service of a revised set of [discovery requests], in the manner normally allowed by the Board, instead of bringing their dispute to the Board by motion to compel. TBMP § 405.03(e) (June 2018). Again, the Board expects both parties to cooperate with one another in the discovery process, and looks with extreme disfavor on those who do not. TBMP

§ 408.01. By its February 8, 2018 order, the Board encouraged the parties to use the discovery guidelines set forth in the order to help resolve their discovery dispute and avoid procedural gamesmanship.

Inasmuch as Request Nos. 1-18 of Applicant's revised document requests are identical to Request Nos. 1-18 of Applicant's first set of document requests, Opposer is ordered to supplement its original responses to Applicant's first set of document requests, Request Nos. 1-18, in accordance with the guidelines set forth in the Board's February 8, 2018 order within **twenty-seven days** from the mailing date of this order. Opposer is further ordered to provide responses to Request Nos. 19-48 of Applicant's revised document requests within **twenty-seven days** from the mailing date of this order. Opposer may not object to Applicant's revised document requests containing forty-eight requests on the basis of excessive number.

Applicant's Motion to Extend

Under Trademark Rule 2.120(a)(3), 37 C.F.R. § 2.120(a)(3), the time to respond to written discovery requests may be extended upon stipulation of the parties, or upon motion granted by the Board, or by order of the Board. Likewise, under Trademark Rule 2.120(a)(2)(iv), 37 C.F.R. § 2.120(a)(2)(iv), limited extensions of the discovery period may be granted upon stipulation of the parties approved by the Board, or on motion granted by the Board, or by order of the Board.

Pursuant to Fed. R. Civ. P. 6(b)(1)(A), made applicable to Board proceedings by Trademark Rule 2.116(a), 37 C.F.R. § 2.116(a), the appropriate standard for allowing an extension of a specified time period prior to the expiration of that period is "good

cause.” *See also Estudi Moline Dissey, S.L. v. BioUrn Inc.*, 123 USPQ2d 1268, 1271 n.6 (TTAB 2017) (a party wishing to serve discovery requests at a point in the discovery period when the last day for responding to the requests would fall after the close of discovery may seek an extension of the discovery period and not a reopening of the discovery period if it can establish good cause). Here, Applicant served its revised set of document requests on March 13, 2018, and filed its combined motion to compel and extend the discovery period on March 16, 2018 before discovery closed on March 20, 2018. Therefore, the proper standard to apply is good cause. *See Trans-High Corp. v. JFC Tobacco Corp.*, 127 USPQ2d 1175, 1176-77 (TTAB 2018). Therefore to the extent Opposer attempts to argue that Applicant has not demonstrated excusable neglect, its argument is not persuasive.

Generally the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See Am. Vitamin Prods., Inc. v. Dowbrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992). The moving party, however, retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. *Nat’l Football League v. DNH Mgmt., LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008) (citing *Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147 (TTAB 1985)). Moreover, a motion to extend must set forth with particularity the facts said to constitute good cause; “cursory or conclusory allegations that are denied unequivocally by the non-movant, and that are not otherwise supported by the record, will not constitute a

showing of good cause.” *Instruments SA, Inc. v. ASI Instruments, Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999); *see also Luemme, Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999).

Here, Applicant appears to have acted diligently, inasmuch as it apparently believed that it simply had to await Opposer’s supplemental responses pursuant to the Board’s February 8, 2018 order, and sent revised document requests within one week of receiving Opposer’s objection as to an excessive number of document requests in Applicant’s first set of document requests. There is no evidence of bad faith on the part of Applicant in requesting the extension, and the extension privilege has not been abused. Based on the record, Applicant has demonstrated the requisite good cause to warrant a sixty-day extension of the discovery period and, therefore, Applicant’s motion to extend is **granted**.

As set forth above, Opposer is allowed until **twenty-seven days** from the mailing date of this order in which to serve responses to Applicant’s revised set of document requests. Discovery as to Opposer will close **thirty days** from the mailing date of this order. Discovery as to Applicant remains open until **sixty days** from the mailing date of this order so that Applicant may take follow-up discovery.²

Additionally, it is apparent that many of the issues brought before the Board in this proceeding could have been resolved by either party simply picking up the telephone and either calling the other party or calling the Board with the other party on the line. Therefore in the event either party plans to file a motion to compel

² The scope of any additional document requests served by Applicant may not go beyond that of Applicant’s revised document requests.

discovery, the moving party must first contact the assigned interlocutory attorney by telephone (with the adverse party on the line) so that the Board can ascertain whether the moving party has demonstrated a good faith effort in resolving the discovery dispute before filing its motion. The moving party must also be prepared to identify each conversation with the other party regarding the discovery request(s), notice(s) of deposition or disclosure(s) at issue, and describe the substance thereof.

Schedule

Proceedings are **resumed**. Discovery, disclosure, and trial dates are reset as follows:

Opposer's Responses to Applicant's Revised Document Requests Due	August 20, 2018
Discovery as to Opposer Closes	August 23, 2018
Discovery as to Applicant Closes	September 24, 2018
Plaintiff's Pretrial Disclosures Due	November 8, 2018
Plaintiff's 30-day Trial Period Ends	December 23, 2018
Defendant's Pretrial Disclosures Due	January 7, 2019
Defendant's 30-day Trial Period Ends	February 21, 2019
Plaintiff's Rebuttal Disclosures Due	March 8, 2019
Plaintiff's 15-day Rebuttal Period Ends	April 7, 2019
BRIEFS ARE DUE AS FOLLOWS:	
Plaintiff's Main Brief Due	June 6, 2019
Defendant's Main Brief Due	July 6, 2019
Plaintiff's Reply Brief Due	July 21, 2019

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the

manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

Information for Applicant as *Pro Se* (without an Attorney)

While Patent and Trademark Rule 11.14 permits an individual to represent himself or herself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Office cannot aid in the selection of an attorney. See TBMP § 114.02.

If Applicant does not retain counsel, he should become familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice (37 C.F.R. Part 2). Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”), available at <http://tbmp.uspto.gov/RDMS/TBMP/current>, the TTABVUE system for viewing the record for all Board proceedings, available at <http://ttabvue.uspto.gov/ttabvue/>, and the Standard Protective Order, available at <https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>. The Board’s home page, available at <https://www.uspto.gov/trademarks->

[application-process/trademark-trial-and-appeal-board](#), contains these and many other resources useful in Board proceedings. The Board's order instituting this proceeding also includes information with which Applicant should be familiar. Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008).

This *inter partes* proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. Trademark Rules 2.122–2.125 govern the trial evidence and testimony. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony or trial periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. Additionally, the testimony of witnesses in *inter partes* cases may be submitted in the form of an affidavit or a declaration pursuant to Trademark Rule 2.20 and in conformance with the Federal Rules of Evidence, filed during the proffering party's testimony period, subject to the right of any adverse party to elect to take and bear the expense of oral cross-examination of that witness. *See* Trademark Rule

Opposition No. 91233690

2.123(a)(1). No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.

EXHIBIT 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc. Opposer, v. Rusty Ralph Lemorande Applicant.	Opposition No.: 91233690 OPPOSER IMAGE TEN, INC.'S SUPPLEMENTAL RESPONSE TO APPLICANT RUSTY LEMORANDE'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
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PROPOUNDING PARTY: APPLICANT RUSTY RALPH LEMORANDE ("RUSTY")
RESPONDING PARTY: OPPOSER IMAGE TEN, INC.
SET NO.: ONE (1)

**OPPOSER'S RESPONSE TO APPLICANT'S SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120 of the Trademark Rules of Practice, Opposer Image Ten, Inc. ("Opposer") hereby submits responses to the Second Set of Requests for Production of Documents propounded by Rusty Ralph Lemorande ("Lemorande"), as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTION

1. Opposer hereby provides its Supplemental Response to Lemorande pursuant to the TTAB Order dated July 23, 2018.
2. Opposer states that its responses are based on its present knowledge, information or belief. Opposer also states that they are responding to the requests as they interpret and understand each request. Further discovery and investigation may reveal information not presently known to Opposer upon which Opposer may rely at the time of trial. Opposer reserves

its right, without assuming any obligation not required by law, to amend or supplement its responses to the requests as necessary.

3. Opposer states that the information and/or documents provided in its responses to the requests do not constitute an admission that such information is relevant to the pending litigation. Opposer specifically reserves all objections to the relevancy or admissibility at trial, or in connection with any motion, hearing or other proceeding, of any information provided.

4. Opposer states that nothing contained in these responses should be construed as an admission relative to the existence or non-existence of any fact and no response is to be considered an admission about the relevance or admissibility of any information contained herein.

5. Opposer expressly incorporates this Preliminary Statement into each of the following responses.

GENERAL OBJECTIONS

A. Opposer objects to the Requests propounded by Applicant to the extent they seek information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence with respect to the issues in this action

B. Opposer objects to the Requests as burdensome and as designed, in whole or in part, to harass rather than to serve any legitimate discovery purpose.

C. Opposer hereby objects to each and every request as being vague and ambiguous.

D. Opposer objects to the Requests as overbroad and not limited to a reasonable time period.

E. Opposer objects to the Requests to the extent they seek information of a commercially sensitive nature. Revealing such information would substantially and irreparably injure Applicant by revealing information which derives independent economic value from not being generally known or which has been acquired primarily through confidential research and development efforts by or on behalf of Applicant.

F. Opposer objects to the Requests to the extent they seek privileged information protected by the attorney-client privilege or the attorney-work product doctrine. Such privileged information includes, but is not limited to, the following:

- a. Information which constitutes, reflects, refers to or relates to confidential communications between officers, directors or employees of Opposer and counsel; and
- b. Information which constitutes, reflects, refers to or relates to the impressions, conclusions, opinions or mental process of counsel, their agents or employees.

G. Opposer objects to the Requests to the extent they seek information relating to employees or customers of Opposer, the discovery of which would invade their right to privacy.

H. Opposer objects to the Requests to the extent Applicant has exceeded the limit for such Requests under the Federal Rules of Civil Procedure.

RESPONSES

REQUEST FOR PRODUCTION NO. 1:

Produce copies of all licenses that identify You as a licensor of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 2:

Produce copies of licenses that identify You as the licensee of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 3:

Produce copies of all assignments of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 4:

Produce all Documents that evidence your ownership of the Mark in the United States.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 5:

Produce copies of complaints and other documents filed by You or on Your behalf regarding any Action You have filed regarding the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 6:

Produce copies of financial statements showing all income earned by you from use of the Mark for Motion Pictures in the last 20 years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to this request as seeking documents that are neither relevant nor reasonably calculated to lead to the discovery of relevant information. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 7:

Produce all other Documents in Your possession, not produced in response to Requests #1-6 above, that in any manner reference, memorialize, acknowledge, mention, discuss or otherwise pertain to Your ownership of the Mark for Motion Picture production.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 8:

Produce all Documents to support the claims You made in the Notice of Opposition.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent

documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 9:

Produce all Documents to support your answer to Request for Admission #1 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 10:

Produce all Documents to support your answer to Request for Admission #2 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 11:

Produce all Documents to support your answer to Request for Admission #3 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent

documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 12:

Produce all Documents to support your answer to Request for Admission #4 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 13:

Produce all Documents to support your answer to Request for Admission #5 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 14:

Produce all Documents to support your answer to Request for Admission #6 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the

attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 15:

Produce all Documents to support your answer to Request for Admission #7 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 16:

Produce all Documents to support your answer to Request for Admission #8 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 17:

Produce all Documents to support your answer to Request for Admission #9 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 18:

Produce all Documents to support your answer to Request for Admission #10 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 19:

Produce copies of all tax returns in any years in which You claim to have received income or revenue from use of the of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Opposer also the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information protected from discovery. Opposer also objects to the extent the documents are not relevant to the current proceeding and are not reasonably calculated to lead to the discovery of relevant information.

REQUEST FOR PRODUCTION NO. 20:

Produce copies of all receipts and invoices in any years in which You claim to have received income or revenue from use of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 21:

Produce copies of all tax returns in any years in which Mr. John A. Russo claims to have received income or revenue from use of the of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 22:

Produce all copies of all tax returns in any years in which Mr. Russell Streiner claims to have received income or revenue from use of the of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Opposer objects to the request given that it is untimely as the response to the request would be due after the close of discovery. TBMP §403.03; 37 C.F.R. §2.120(a)(3). Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client

privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 23:

Produce copies of all tax returns in any years in which Mr. Mr. Gary Streiner claims to have received income or revenue from use of the of the Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 24:

Produce copies of all invoices and receipts in any years in which You claim to have received income or revenue from use of the of the Mark for tee-shirts, toys, and other merchandise as described in your Answers to Interrogatories, Set 1.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 25:

Produce all correspondence, including copies of agreements, between You and Robert Lucas as references in your Answer to Interrogatory 15.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 26:

Produce all documents evidencing annual gross revenue received from the conduct of entertainment media production for each of the past five years as described in Interrogatory No. 31.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 27:

Provide copies of all documents evidencing annual gross revenue You have received from your use or licensing of the Mark for the production of a Motion Picture in the last ten years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 28:

Produce copies of all documents which evidence each documentary concerning the title “Night of the Living Dead” and the Mark as reported by you in the answer to Interrogatory N. 33.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 29:

Provide copies of all documents evidencing any revenue generating activity regarding the Mark as described by you in answer to Interrogatory No. 34.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 30:

Provide copies of all licenses for action figures, toys, T-shirts, videos, movie stills, and similar as described by you in your answer to Interrogatory No. 34.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the

extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 31:

Provide all written documents evidencing the horror conventions described by you in Answer to Interrogatory No. 34.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 32:

Provide documentary evidence of the ‘merchandise and signatures from actors, director and writers are provided on various memorabilia items including copies of original movie posters for the movie’ as described by you in your answer to Interrogatory No, 34.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 33:

Provide documentary evidence of the licenses You described in your answer to Interrogatory No. 34 for action figures, toys, T-shirts, videos, movie still and various memorabilia.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding. Subject to and without waiving the foregoing objections, Opposer will produce non-privileged responsive documents to the extent such documents exist.

REQUEST FOR PRODUCTION NO. 34:

Provide copies of receipts, invoices or any written documentation of income relived for the providing of signatures on various memorabilia items including copies of movie posters as described in your answer to Interrogatory.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 35:

Provide written documents evidencing the ‘various documentaries and anniversary release of the movie’ as stated in your answer to Interrogatory 35.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 36:

Provide written documents evidencing the ‘new versions of the original film’ which You state you have ‘marketed’ in your answer to Interrogatory #35.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 37:

Provide written evidence of the two documentary films you describe in your answer to Interrogatory No. 37.

RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 38:

Provide written documentation evidencing the ‘trust’ referred to in your answer to Interrogatory No. 4.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the

extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 39:

Provide written documentation of the continuing 'required corporate tax payments' as described by you in your answer to Interrogatory #45.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 40:

Provide written evidence of the 'corporate fees' you claim Image 10 has paid, since inception in 1967 until the present, as described in your answer to Interrogatory #46

RESPONSE TO REQUEST FOR PRODUCTION NO. 40:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 42:

Produce all Documents to support your answer to Request for Admission #34 in Rusty Lemorande's First Set of Requests for Admission.

RESPONSE TO REQUEST FOR PRODUCTION NO. 42:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by

the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 43:

Provide written evidence of the licensing of its trademark Night of the Living Dead and images from the movie Night of the living Dead since the movie was released in 1968..

RESPONSE TO REQUEST FOR PRODUCTION NO. 43:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 44:

Provide all documents, including correspondence, pertaining to the transfer of the registration from SphereWerx, LLC to Image 10.

RESPONSE TO REQUEST FOR PRODUCTION NO. 44:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 45:

Provide all documents, including correspondence pertaining to the ‘previous relationship’ and ‘work in the past’ between SphereWerx LLC and Image 10.

RESPONSE TO REQUEST FOR PRODUCTION NO. 45:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO.46:

Produce copies of all interviews mentioned and described in Answer to Interrogatory #36 unless reasonably available on the Internet, and in such instance(s):

RESPONSE TO REQUEST FOR PRODUCTION NO. 46:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 47:

Produce the links to the readily available interviews as mentioned and described in Answer to Interrogatory #36..

RESPONSE TO REQUEST FOR PRODUCTION NO. 47:

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

REQUEST FOR PRODUCTION NO. 48:

Provide written evidence of the existence and occurrence of the ‘activities’ You describe in your answer to Interrogatory #47.

RESPONSE TO REQUEST FOR PRODUCTION NO. 48

Opposer also incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the request seeks documents protected from discovery by the attorney-client privilege or attorney work product doctrine. Opposer further objects to the extent documents contain confidential and proprietary information. Opposer also objects to the extent the documents are not relevant to the current proceeding.

Dated: August 20, 2018

Respectfully Submitted,

/mmeeks/

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CERTIFICATE OF SERVICE

Opposer, Image Ten, Inc., hereby certifies that a copy of this OPPOSER IMAGE TEN, INC.'S SUPPLEMENTAL RESPONSE TO APPLICANT RUSTY LEMORANDE'S SECOND SET OF REQUEST FOR PRODUCTION has been served upon Applicant on this 20th day of August, 2018 by email at the following address:

Lemorande@gmail.com

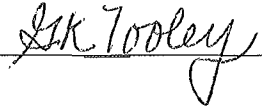
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EXHIBIT 3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc. Opposer, v. Rusty Ralph Lemorande Applicant.	Opposition No.: 91233690 OPPOSER IMAGE TEN, INC.'S RESPONSE TO APPLICANT RUSTY RALPH LEMORANDE'S FIRST SET OF REQUEST FOR ADMISSIONS
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PROPOUNDING PARTY: APPLICANT RUSTY RALPH LEMORANDE
RESPONDING PARTY: OPPOSER IMAGE TEN, INC.
SET NO.: ONE (1)

OPPOSER'S RESPONSE TO APPLICANT'S INTERROGATORIES (SET 1)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120 of the Trademark Rules of Practice, Opposer Image Ten, Inc. ("Opposer") hereby responds to the First Set of Admissions propounded by Rusty Ralph Lemorande ("Lemorande"), as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTION

1. Opposer states that discovery is ongoing and will continue as long as permitted and that Opposer has not yet completed its investigation in this matter. Opposer specifically reserves its right to introduce any evidence from any source and/or testimony from any witness in this matter.

2. Opposer states that its responses are based on its present knowledge, information or belief. Opposer also states that they are responding to the requests as they interpret and understand each request. Further discovery and investigation may reveal information not presently known to Opposer upon which Opposer may rely at the time of trial. Opposer reserves its right, without assuming any obligation not required by law, to amend or supplement its responses to the requests as necessary.

3. Opposer states that the information and/or documents provided in its responses to the interrogatories do not constitute an admission that such information is relevant to the pending litigation. Opposer specifically reserves all objections to the relevancy or admissibility at trial, or in connection with any motion, hearing or other proceeding, of any information provided.

4. Opposer states that nothing contained in these responses should be construed as an admission relative to the existence or non-existence of any fact and no response is to be considered an admission about the relevance or admissibility of any information contained herein.

5. Opposer hereby objects to each and every request as being vague and ambiguous.

6. Opposer hereby objects to each and every request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. No response contained herein will include such privileged information.

7. Opposer objects to each and every request as seeking information that is not relevant to the proceeding. Opposer further objects that Applicant has failed to show a basis for seeking any of the information including any showing that such admission is likely to lead to the discovery of admissible evidence.

8. Opposer objects to each and every request as being burdensome and oppressive and to the extent the request seeks the summary of information, then Applicant is in the same position as Opposer to create any such summary and if Opposer is required to provide such information, Lemorande should be required to prepare any such summaries from the documents produced.

9. Opposer expressly incorporates this Preliminary Statement into each of the following responses.

RESPONSES

REQUEST FOR ADMISSION NO. 1:

Admit that the Image 10 does not own the exclusive rights to any motion picture entitled "NIGHT OF THE LIVING DEAD".

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Deny

REQUEST FOR ADMISSION NO. 2:

Admit that the Image 10 does not own the exclusive rights to any television shows entitled “NIGHT OF THE LIVING DEAD”.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Deny

REQUEST FOR ADMISSION NO. 3:

Admit that the Image 10 does not own the exclusive rights to any commercial video entitled “NIGHT OF THE LIVING DEAD”.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Deny

REQUEST FOR ADMISSION NO. 4:

Admit that the Image 10 does not own the exclusive rights to any audio program “NIGHT OF THE LIVING DEAD”.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Deny

REQUEST FOR ADMISSION NO. 5:

Admit that the Image 10 does not own the exclusive rights to any video program entitled “NIGHT OF THE LIVING DEAD”.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Deny

REQUEST FOR ADMISSION NO. 6:

Admit that the Image 10 has not produced a motion picture in more than 10 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Deny

REQUEST FOR ADMISSION NO. 7:

Admit that the Image 10 has not produced a motion picture in more than 20 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Deny

REQUEST FOR ADMISSION NO. 8:

Admit that the Image 10 has not produced a motion picture in more than 40 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Deny

REQUEST FOR ADMISSION NO. 9:

Admit that the Image 10 has not produced a motion picture in more than 45 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Deny

REQUEST FOR ADMISSION NO. 10:

Admit that Image 10 has not sought Federal Trademark registration, since the film's creation in 1968, prior to 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Deny

REQUEST FOR ADMISSION NO. 11:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in 2014 and directed by Chad Zuver.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 12:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in 2013 and directed by Samuel Victor.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 13:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled CHILDREN OF THE LIVING DEAD, directed by Tor Ramsey in 2001.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 14:

Admit that Image 10 did not authorize or license use of the title, ANOTHER NIGHT OF THE LIVING DEAD, for the motion picture so entitled, produced in 2011 and directed by Alan Smithee.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 15:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: GENESIS, directed by Matt Cloude in 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 16:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: Rebirth, directed by Roger Conners in 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 17:

Admit that Image 10 did not authorize or license use of the title, HOUSE OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD 3D directed by Ray Austin in 1974.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 18:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled OF THE LIVING DEAD directed by Albert Cochran in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 19:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: REANIMATED, directed by Mike Schneider in 2009.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 20:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: REBOOT directed by Lewis Guthrie in 2013.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 21:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: RESURRECTION directed by James Plumb in 2012.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 22:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled OPENING NIGHT OF THE LIVING DEAD, directed by Joshua Dickinson in 2014.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 23:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: DARKEST DAWN, directed by Zebediah De Soto and Krisztian Majdik in 2015.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 24:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NERD OF THE LIVING DEAD directed by Stu Dodge in 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 25:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled ONE FOR THE FIRE: THE LEGACY OF NIGHT OF THE LIVING DEAD, directed by Robert Lucas in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Deny

REQUEST FOR ADMISSION NO. 26:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled SEXY NIGHTS OF THE LIVING DEAD, directed by Joe D'Amatz in 1980.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 27:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD 3D: RE-ANIMATION, directed by Jeff Broadstreet in 2012.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 28:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF THE LIVING DEAD, directed by Brian Yuzna in 1993.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 29:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF THE LIVING DEAD II, directed by Ken Wiederhorn in 1988.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 30:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled RETURN OF THE LIVING DEAD, directed by Brian Yuzna in 1993.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 31:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD: RAVE TO THE GRAVE, for the motion picture entitled RETURN OF THE LIVING DEAD, directed by Ellory Elkayem in 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 32:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture entitled NIGHT OF THE LIVING DEAD: NECROPOLIS, directed by Ellory Elkayem in 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 33:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled PARIS BY NIGHT OF THE LIVING DEAD, directed by Gregory Morin in 2009.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 34:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled OPENING NIGHT OF THE LIVING DEAD, directed by Jonathan McDevitt in 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 35:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled OPENING NIGHT OF THE LIVING DEAD, directed by Shalena Oxley in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 36:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LIVING DEAD, directed by Rich P. Matthews in 2004.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 37:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled STRANGE NIGHT OF THE LIVING DEAD, directed by Roman Soni in 2014.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 38:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LIVING DEAD MEXICANS, directed by Nicholas Humphries in 2008.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 39:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LIVING DEAD PHONE, produced in 2015.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 40:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled MISLEAD: NIGHT OF THE LIVING DEAD, produced in 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 41:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE SO LIVING DEAD GUY, directed by Michael Kesler in 2002.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 42:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LOVING DEAD, directed by Anna Humphries in 2012.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 43:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for the motion picture short entitled NIGHT OF THE LOVING DEAD, directed by Steve Look in 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

REQUEST FOR ADMISSION NO. 44:

Admit that Image 10 did not authorize or license use of the title, NIGHT OF THE LIVING DEAD, for any of the following T.V. Episodes:

Night Of The Living Dead 1991 An Actor's Life For Me
Night Of The Living Dead 2007 Crossing Jordan
Night Court Of The Living Dead 1988 Night Court
Night Of The Living Dead Monrovia 2012 Horror Kung-Fu Theatre
Night Of The Living Dead KHIZ 2001 Horror Kung-Fu Theatre
Night Of The Living Dead Dead Bigfoots 1999 Horror Kung-Fu Theatre
Night Of The Living Dead Leprechauns 2004 Horror Kung-Fu Theatre
Night Of The Living Dead Elvises 1991 Horror Kung-Fu Theatre
Dead Of The Living Night 2001 Horror Kung-Fu Theatre
Night Of The Living Dead: Just A Girl 2014 Longbox of the Damned
Night Of The Living Dead Beverly Hills 2002 Horror Kung-Fu Theatre
Night Of The Living Dead: Part 1 2016 Angry Internet Personality

Night Of The Living Dead: Part 1 2012 Survival of the Dumbest
Night Of The Living Dead Reanimated (2009) 2010 The Schlocky Horror Picture Show
Night Of The Living Dead Boyle Heights 2009 Horror Kung-Fu Theatre
Night Of The Living Dead: Part Duxx 2012 Survival of the Dumbest
Night Of The Living Dead Beverly Hills 2002 Horror Kung-Fu Theatre
Night Of The Living Dead: Part 1 2016 Angry Internet Personality
Night Of The Living Dead: Part 1 2012 Survival of the Dumbest
Night Of The Living Dead Elvis's KHIZ 2003 Horror Kung-Fu Theatre
Night Of The Living Dead: Part Duxx 2012 Survival of the Dumbest
Night Of The Living Dead: Part 2 2016 Angry Internet Personality
Night Of The Living Dead Elvis's Diamond Bar 1995 Horror Kung-Fu Theatre
Night Of The Living Dead East Los Angeles 2007 Horror Kung-Fu Theatre
A Night for the Living, a Mourning for the Dead 2012 Blade

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Opposer lacks sufficient knowledge to admit or deny the request and on that basis denies the request.

Dated: October 11, 2017

Respectfully Submitted,

/fbhatti/

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CERTIFICATE OF SERVICE

Opposer, Image Ten, Inc., hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon Applicant on this 11th day of October, 2017, by First Class U.S. Mail, postage prepaid, at the following address:

Rusty Ralph Lemorande
245 N. Crescent Hts, Blvd. #B
Los Angeles, California 90046

/fbhatti/

Attorney for Opposer